IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2941 OF 2003.
IN
SUIT NO. 2099 OF 1996

Usha Jhaveri.] .. Plaintiff

Versus

1. Himanshu Jhaveri & Ors.] .. Defendant

Ms.Hina A. Mody for the plaintiff.

Mr.Z.S. Kamdin i/b Wadia Ghandy & Co. for the defendants.

CORAM: ANOOP V. MOHTA, J.

DATED: 14TH SEPTEMBER, 2005

P.C. :

1. By this Notice of Motion, the present plaintiff, in a suit of partition which is pending, prays for direction against the Receiver to pay the amount received as royalty from the Office premises at 2nd floor, Panchratna, Jidakhadi, Surat, to the plaintiff. There is no dispute in this matter that the Supreme Court, initially on 17th August, 2000 and then by an order dated 26th August, 2003, accepted the Consent Terms, the basic terms wherein are as under:

> "(1) The petitioner Himanshu Sureshchandra Jhaveri shall pay to the respondent Usha Sureshchandra Jhaveri a sum of Rs.10,000/- every month on or before 7th day of the every month.
>
> (4) The amount receivable from Panchratna property shall be collected by the petitioner Himanshu Sureshchandra Jhaveri from the receiver.
>
> (5) The receiver shall hand over the possession of Prabhu Darshan Society Flat No.104 to the petitioner Himanshu Sureshchandra Jhaveri.
>
> (7) In the event of two successive default in the payment of the maintenance of Rs.10,000/- per month by the petitioner Himanshu Sureshchandra Jhaveri to the respondent Usha Sureshchandra Jhaveri, the order of the Bombay High Court dated 1st December, 1999 will become operative irrespective of the directions issued in this application.

2. The said order was further modified on 2nd September, 2003 [Exhibit-4A], whereby, two clauses were substituted. The Apex Court has further observed that the injunction granted by the High Court in regard to various properties as per first Order dated 29th August, 1996, shall continue to operate.

3. The above order passed by the Apex Court on Consent Terms between the parties speaks for itself that pending the suit, those terms and conditions would operate.

4. Taking into consideration, the above orders passed by the Supreme Court, as well as, the terms reflected in the said orders and specially the clauses as referred above, I am not inclined to grant any relief as prayed for in this Notice of Motion. In view of this, the Notice of Motion is dismissed. No order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]